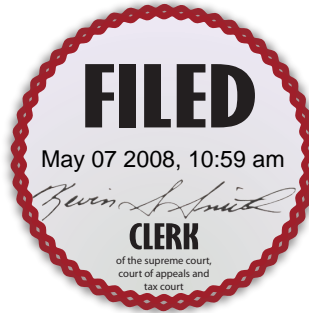


Pursuant to Ind.Appellate Rule 65(D), this Memorandum Decision shall not be regarded as precedent or cited before any court except for the purpose of establishing the defense of res judicata, collateral estoppel, or the law of the case.



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**IN THE
COURT OF APPEALS OF INDIANA**

JULIE BOSLEY,

Appellant-Defendant,

vs.

STATE OF INDIANA,

Appellee-Plaintiff.

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No. 49A05-0710-CR-581

APPEAL FROM THE MARION SUPERIOR COURT
The Honorable John W. Hammel, Judge
Cause No. 49F24-0704-FD-56019

May 7, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

BAILEY, Judge

Statement of the Case

Julie Bosley appeals the trial court's restitution order following her conviction of Theft, as a Class D felony.¹ We affirm.

Issue

Bosley raises one issue: whether the trial court acted within its discretion when it ordered restitution to the victim in the amount of \$3400.

Facts and Procedural History

Douglas Lieland received \$1800 in cash from a couple to purchase materials for a chain link fence he had agreed to install for them. Lieland placed the cash in a manila envelope and tucked it between a console and seat in a truck he was driving. Later that day, while Lieland performed mechanical repairs on Bosley's vehicle, Bosley cleaned the interior of the truck and took the money.

Bosley was charged with and convicted of theft. At the sentencing hearing, Lieland testified that, to "replace" the \$1800 needed to complete the "fence job," he "had to sell two of [his] own personal vehicles" worth \$3450 for \$1800. Tr. 72. The trial court sentenced Bosley to 545 days of home detention and ordered restitution to Lieland in the amount of \$3400.² Bosley appeals the restitution order.

Discussion and Decision

Standard of Review

¹ Ind. Code § 35-43-4-2.

² The discrepancy between Lieland testimony regarding the value of the personal vehicles, \$3450, and the restitution amount, \$3400, is not at issue.

In addition to any sentence imposed for a criminal offense, the trial court is authorized to order restitution to the victim of the crime. Ind. Code § 35-50-5-3. “The principal purpose of restitution is to vindicate the rights of society and to impress upon the defendant the magnitude of the loss the crime has caused.” Pearson v. State, 883 N.E.2d 770, 772 (Ind. 2008). In addition, restitution serves as compensation for the victim of a crime. Id.

An order of restitution is a matter within the sound discretion of the trial court, and we reverse only when that discretion is abused. Long v. State, 867 N.E.2d 606, 618 (Ind. Ct. App. 2007). An abuse of discretion occurs if the court’s decision is clearly against the logic and effects of the facts and circumstances before it. Id. An abuse of discretion also occurs “when the trial court misinterprets or misapplies the law.” Bennett v. State, 862 N.E.2d 1281, 1286 (Ind. Ct. App. 2007) (citations omitted).

Analysis

Bosley claims that the trial court ordered a type of restitution not compensable under the relevant statute and that there was insufficient evidence to support the award. Indiana Code section 35-50-5-3(a) provides in part:

The court shall base its restitution order upon a consideration of:

- (1) property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate);
- (2) medical and hospital costs incurred by the victim (before the date of sentencing) as a result of the crime;
- (3) the cost of medical laboratory tests to determine if the crime has caused the victim to contract a disease or other medical condition;
- (4) earnings lost by the victim (before the date of sentencing) as a result of the crime including earnings lost while the victim was hospitalized or participating in the investigation or trial of the crime; and
- (5) funeral, burial, or cremation costs incurred by the family or estate of a

homicide victim as a result of the crime.

Bosley correctly posits that, under the statute, the amount of restitution ordered must reflect the actual loss suffered by Lieland. See Long v. State, 867 N.E.2d 606, 618 (Ind. Ct. App. 2007). But she insists that Lieland's actual loss is \$1800, not \$3400. Bosley characterizes the sale of vehicles as money that Lieland "expended" rather than lost. Appellant's Br. at 7.

Bosley likens her case to Henderson v. State, 848 N.E.2d 341 (Ind. Ct. App. 2006), where the defendant set fire to a trailer she owned, then filed a claim with Allstate Insurance Company. The insurer spent \$20,932.48 in investigating the fire. After the defendant pleaded guilty to conspiracy to commit arson with intent to defraud, the trial court ordered her to reimburse Allstate for its investigative expenses. Id. at 343. On appeal, this Court reversed the order, concluding that Allstate's expenditures did not constitute "earnings lost by the victim" under Indiana Code section 35-50-5-3(a)(4). Thus, we held that the expenses were not compensable as restitution in a criminal proceeding. Id. at 346.

We agree with the result in Henderson but do not find it controlling. Unlike Allstate, Lieland did not expend money. Rather, to recoup the \$1800 lost and, thus, complete the fencing job he had contracted to perform, he was forced to sell two automobiles he owned. His restitution request more appropriately falls under section 35-50-5-3(a)(1), which authorizes restitution for "property damages of the victim incurred as a result of the crime, based on the actual cost of repair (or replacement if repair is inappropriate)." In particular, the "property" is \$1800, and the "damage" suffered was its confiscation. To "replace" the \$1800, Lieland was forced to sell other property worth \$3400.

Still, Bosley complains that there was no title or license registration to show ownership of the vehicles, no receipts reflecting the sale, and insufficient evidence of value. The record includes Lieland's testimony regarding the sale, which is undisputed. Lieland also stated that he suffered a total loss of \$1650 when selling the vehicles. In addition, in the victim impact statement, Lieland listed the two vehicles and their respective values of \$1825 and \$1625 and their distress sale prices, \$800 and \$1000, respectively. Lieland attached "Vehicle Pricing & Information" with "Centra Credit Union" stamped on each page, providing the \$1825 and \$1625 amounts as the "low retail" value for the vehicles. This evidence shows that, in order to recoup the \$1800 needed to purchase fencing materials, Lieland suffered losses of \$1025 and \$625, respectively, on the sale of the vehicles. Stated otherwise, before the theft, Lieland owned two vehicles with a value of \$3450 and he possessed \$1800 in cash. After the theft and the forced sale, he had no vehicles but regained the \$1800 he needed. Accordingly, Lieland suffered an actual loss of \$3450 as the direct result of Bosley's criminal conduct. Bosley had a "responsibility to make good that loss as completely as possible." See Kotsopoulos v. State, 654 N.E.2d 44, 46 (Ind. Ct. App. 1995), trans. denied. The trial court acted within its discretion when it ordered restitution in the amount of \$3400.

Affirmed.

FRIEDLANDER, J., concurs.

KIRSCH, J., dissents without opinion.